

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6851 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

FAQRUDDIN USMANBHAI SUMARA FRIEND OF DETENUE

Versus

DIST.MAGISTRATE MEHSANA

Appearance:

MR NM KAPADIA for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/12/1999

ORAL JUDGEMENT

1. The detinue came to be detained under the provisions of the PASA by virtue of an order passed by the District Magistrate, Mehsana on March 13, 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act,

1985 [hereinafter referred to as 'the PASA Act', for short]. The grounds of detention indicate that the detaining authority took into consideration three prohibition cases registered against the detainee, statements of three anonymous witnesses and came to a conclusion that the statements made by the witnesses in respect of the incidents are correct and the fear expressed by them qua the detainee is genuine. The authority therefore exercised powers u/s 9[2] of the PASA Act. The authority was subjectively satisfied that the detainee is a bootlegger and resorting to a less drastic remedy is not possible, as it is necessary to immediately prevent him from pursuing his illegal and anti social activities detrimental to public order and therefore, resorted to the provisions of the PASA Act.

2. The detainee has approached this Court with this petition under Article 226 of the Constitution of India assailing the order of detention on various grounds. The main ground being that there is gross and unexplained delay in passing of the orders.

3. Mr. Kapadia, learned advocate appearing for the detainee has submitted that the statements of three anonymous witnesses were recorded on 14th, 15th and 16th January 1999 respectively. These statements were verified by the Dy.S.P., Mehsana on 24th January 1999. The same were verified by the detaining authority on 11th March 1999 and the order was passed on 13th March 1999. Mr. Kapadia therefore submitted that there was a delay of about 1 month and three weeks in taking action and therefore, the need for resorting to PASA for immediately preventing the detainee from pursuing his activities recorded by the detaining authority is not genuine. He submitted that therefore the detainee may be allowed and the order of detention may be set aside.

4. Mr. D.P.Joshi, learned AGP for the respondents has opposed this petition. He submitted that the delay is not inordinate that would prove to be fatal to the detention. On earlier occasion, he had sought time and today, after verifying the files, he states that the statements of anonymous witnesses were recorded on 14th, 15th and 16th January 1999. The same were verified by Dy.S.P. on 24th January 1999. A proposal was made by the sponsoring authority and received by the detaining authority on 29th January 1999. The detaining authority verified the statements on March 11, 1999 and thereafter, the order was passed on March 13, 1999.

5. At the outset, it may be stated that the last registered offence relates to an incident of 12th November 1998. The statements of anonymous witnesses which were recorded on 14th, 15th and 16th January 1999, they relate to incident of December 1998. After the statements were recorded and proposal was made on 29th January 1999, the detaining authority slept over the file till 11th March 1999 and recorded a subjective satisfaction for the need for 'immediately' preventing the detainee from pursuing his activities and for resorting to the remedies under the PASA for detaining him. This satisfaction, under no circumstances, can be said to be genuine. The file was with the detaining authority from 29th January 1999 till the order was passed. During this period, there appears not, any incident in involving the detainee with the alleged activities. This Court is, therefore, at loss to understand as to how on 13th March 1999, the authority could have recorded a subjective satisfaction for immediate need of preventing the detainee from his activities. The order therefore suffers from the vice of gross delay vitiating the subjective satisfaction for the need to detain the detainee under the PASA for "immediately preventing the detainee from his activities". No attempt is made by respondents to explain the delay. No affidavit in reply is filed. The petition therefore deserves to be allowed.

6. The petition is allowed. The impugned order of detention passed by the District Magistrate, Mehsana on 13th of March 1999 in respect of the detainee - Nagori [Musalman] Jakirbhai Rahimbhai, is hereby set aside. The detainee be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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